

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MATTHEW WONG,

Case No. 17-cv-704 (WMW/DTS)

Plaintiff,

v.

REPORT AND RECOMMENDATION

EMILY JOHNSON PIPER,
*Commissioner of the Department
of Human Services, et al.,*

Defendants.

Matthew Wong, *Pro Se* Plaintiff

Michael N. Leonard, Assistant Attorney General, State of Minnesota, 445 Minnesota Street, Suite 1100, St. Paul, MN 55101, for Defendants

Matthew Wong filed his complaint in March 2017. Docket No. 1. This case, along with many others, was stayed on June 30, 2017 pending the resolution of *Karsjens v. Piper*, Case No. 11-cv-3659. Docket No. 7. The stay of this case was lifted on October 22, 2018. Docket No. 15.

On November 16, 2018 Defendants brought a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6). Docket No. 19. They filed a Meet and Confer Statement that they had conferred with Wong by telephone and the parties did not agree on a resolution of the motion. Docket No. 21. A hearing on the motion was set for January 15, 2019 but was canceled on December 27, 2018 because Wong had not filed any response to the motion. Docket Nos. 23, 26.

Wong has still not filed any response to the motion or otherwise communicated with the Court. Accordingly, the Court recommends that this lawsuit be dismissed

without prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute and that Defendants' motion to dismiss be denied as moot. See *Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) (district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute).

RECOMMENDATION

For the reasons set forth above, it is recommended that

1. Plaintiff Matthew Wong's Complaint [Docket No. 1] be DISMISSED WITHOUT PREJUDICE pursuant to Fed. R. Civ. P. 41(b); and
2. Defendants' Motion to Dismiss [Docket No. 19] be DENIED AS MOOT.

Dated: January 22, 2018

s/David T. Schultz
DAVID T. SCHULTZ
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).